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United State District Court

Southern District Of Texas

United States District Court
Southern District of Texas
FILED
JUL 18 2016
David J. Bradley, Clerk of Court

Moses Glenn Carroll, Petitioner

V.

Hon. Greg Abbott In His Official Capacity As Governor Of The State Of Texas

Motion For Preliminary Injunction

To The Honorable Judge Of Said Court:

Sex Offender Mose Glenn Carroll, sought Preliminary Injunction against retroactive Application of Texas Registration Act Megan's Law. In Doe v. Pataki, 919 F.Supp. 691 (1996). District Court Judge Chin, J. held that notification provision of Megan's Law were punishment for Ex Post Facto purposes.

1) Criminal Matters And Proceeding:

Sex Offenders were entitled to Preliminary Injunction against retroaction application of notification provision of Houston, Texas Sex Offender Registration Act. commonly referred to as "Megan's Law," notification provision violated "Ex Post Facto" Clause, and that violation satisfied irreparable harm requiredment for obtaining injunction. U.S.C.A. Const. Art. 1, § 9 cl. 3; N.Y. McKinney correction Law 1168 et. seq. Registration.

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2) Sex Offender-Public Notification Provisions of Texas Sex Offender Registration Act (Megan's Law), were "punishment" for ex post facto purposes; public notification of crime was traditionally reviewed as punitive, and public notification service goal of deterrence, imposed affirmative disability or restraint, contained features that were classic indicra of punitive scheme, and had already led to excessively harsh results. U.S.C.A. Const. Art. 1, § 9 Cl. 3; N.Y. McKinney's Correction Law. § 168 et. seq.

3.) Irreparable Harm:

I got stabbed with a knife one afternoon getting off the rail one evening at Houston Community College.

And I got jump on right there on Fannin and Alabama Street my jaw was broken in two place in 2015.

A plaintiff seeking a Preliminary Injunction or Temporary Restraining Order usually must show (A) that it is likely to suffer irreparable harm if temporary injunctive relief is not granted and (B) either (i) likelihood of success on the merits to (ii) sufficient serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tippings decidedly in its favor.

Polymer Technology Corp. v. Mimran, 37 F.3d 74, 77 (2d Cir. 1994). Where the moving party "seeks to stay government action take in the public interest pursuant to a statutory or regulation scheme," however, that party must satisfy the likelihood of success on the merits prong of the test. Able v. United States, 44 F.3d 128, 131 (2d. Cir. 1995) (quoting Plaza Health Lab, Inc. V. Perales, 878 F.2d 577, 580, (2d Cir. 1989)). Accordingly in this case plaintiffs must show irreparable harm and a likelihood of success an the merits Constitution and Statutory provisions.

As to defendant who was sentence under procedure that was not authorized by Texas law at time of Commission of offense, retroactive application of statute which allowed appellate court to reform unauthorized verdict without necessity of remanding for retrial altered defendant's right to retrial a substantial right to his material disadvantages. Thus, application of statute against defendant violated Ex Post Facto Clause of Federal Constitution. U.S.C.A. Const. Art. 1, §§ 9, Cl. 3, 10, Cl. 1; Vernon's Ann. Texas C.C.P. Art. 37.10(b).

4.) Substantive Rights In General:

For purposes of Ex Post Facto Clause, once it is determined that law in question was

Applied retrospective, salient issue becomes whether law operated to disadvantage accused in exercise of substantial right or protection that he previously enjoyed, not whether circumstances of application conformed to paradegment or illustrative category of harms. U.S.C.A. Const. Art. 1, §§ 9 Cl. 3, 10, Cl. 1. I was convicted of Sexual Assault Of Child in 1977 receive 25 years for it I discharge it in 1985. In 2012 I was inform that I had to "Register" as a sex offender. At the time of my sexual assualt conviction there was no plea agreement to register. In "Megan's Law" came into effect in 1996 and retroactivly applied it to my sentece violational the Ex Post Facto Clause.

Ex post facto clause serves two basic purposes; first it ensures that legislation gives fairs warning of its effect and allows citizens, and second, it prevents legistatures from imposing arbitrary or vindictive legislation on people or classes of people. U.S.C.A. Const. Art. 1, § 10, Cl. 1. In Youngblood v. Lynaugh 882 F.2d 956 (1989). Youngblood filed a writ of habeas corpus petition in Federal District Court contending that the retroactive application of Article 37.10 (b) violatived the

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Ex Post Facto Clause of The United States Constitution. The District Court dismiss Youngblood's petition, he now appeals from that dismissal. Garza Circuit Judge Opinion: This case presents a novel question in the Fifth Circuit under the Ex Post Facto Clause of the United States Constitution. We are convinced that Article 37.10(b) of the Tex. Code Crim. Proc. as applied to petitioner Youngblood under the circumstainces of this case, violates the Ex Post Facto clause. We therefore reverse the district court's decision denying appellant's writ of habeas corpus and remand the case for a new trial.

On March 17 1982, appellant Carroll Youngblood was convicted by a Texas jury of aggravated sexual abuse. He was sentence to Life inprisonment and a fine 10,000. He conviction was affirmed on appeal. Subsequently he filed an application for a writ of habeas corpus with the Texas Court of Criminal Appeals, rely upon Bogany v. States 661 S.W. 2d (Tex. Crim. App. 1983) (en banc). In Bogany, the Texas Court of Criminal Appeals held that the sentence enhancement provision, section 12.42(c) Tex. Penal Code, does not authorize punishment to include a fine in addition to prison sentence. The Bogany court concluded that the jury's verdict was void at its inception. It reversed the judgment and ordered a new trial.

In response to the Bogany decision, the Texas Legislative enacted Article 37.10(b), Tex. Code Crim. Proc. which permits reformation of a verdict to omit any punishment not authorized by law. Article 37.10(b) eliminal the need to retry a convicted defendant. This provision went into effect on June 11, 1985. On October 9, 1985, the Texas Court of Criminal Appeals announced it's decision in Ex Parte Johnson, 697 S.W.2d 605 (Tex. Crim. App. 1985) (en banc), which held that Article 37.10(b) is procedural in nature and can be applied retroactively. In dissent presiding Judge Oncon of the Texas Court of Criminal Appeals argured that the retroactive of Article 37.10(b) violated the Ex Post Facto Clause. One week later, on June 16, 1985, the Texas Court of Criminal Appeals denied Youngblood's application for writ of habeas corpus and, relying upon Johnson, applied Article 37.10(b) to Youngblood's conviction, thereby deleting the unauthorized fine assessed by the jury.

5.) The Ex Post Facto Clause

Nine year after the adoption of the United

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States Constitution, the Supreme Court had occasion to consider the meaning of the words Ex post facto as used in Art. 1, § 9, Cl. 3. And Art. 1, § 10 Cl. 1. In Calder v. Bull, 3 Dall. 386 1 L. Ed. 648 (1798), the court concluded that an Ex post facto law is any provision that renders criminal "an action done before the passing of the law and which was innocent when done," or that "makes a crime greater than it was, when committed," or that "inflicts a greater punishment than the law amended to the crime, when committed," or that "alters the legal rules of evidence." 3 Dall. At. 390.

The State Court's analysis of Art. 37.10(b) as applied to Youngblood and others similarly situated is faulty to the extent that it teminates one step short of a complete examination. In precedents dating back more than a century the Supreme Court has held that statutes regulating procedure will violate the Ex Post Facto Clause if they deprive the defendant of "a substantial right given to him by the law in force at the time to which his guilt relates." Thompson v. Utah, 170 U.S. 343, 352, 18 S.Ct. 620, 623, 42 L.Ed 1061 (1897). Procedural statutes must "leave untouched all the substantial protections with which existing law surrounds the person accused of crime."

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Id. citing Duncan v. Missoui, 152 U.S. 377, 382, 14 S.Ct. 570, 572, 38 L.Ed. 485 (1894).

In two other early cases, the Supreme Court instructed that a statute need not even relate to a crime or inflict a punishment, in the judicial sense, for the commission of past crime, in order to constitute an ex post facto law. In Cummings v. The State of Missouri, 4 Wall. 277, 18 L.Ed 356 (1866), the Court held that the exclusion of a minister from the exercise of his clerical function unless he agreed to take an oath that he had not engaged in or encouraged armed aggression against the United States government was an ex post facto law. Once it is determined that the law in question was applied retrospectively, 960 the salient issue becomes whether the law operated to disadvantage the accused in the exercise of a substantial right or protection that he previously enjoyed not whether the circumstances of its application conform to a paradigmatic or illustrative category of harms.

I suggest, however, that the distinction between "mere modes of procedure" and 961 substantial or vital procedural protection is a wobbly one under current Supreme Court jurisprudence. One other early case sums squarely

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to hold that a procedural change in State Law violated the Ex post facto Clause. Kring v. Missouri, 107 U.S. 221, 2 S. Ct. 443, 27 L. Ed. 506 (1882). (Change in the law applicable to guilty pleas, which exposed defendant to conviction for a more serious crime, and operated retroactively, violation Ex post facto Clause). A number of other decisions have found no Ex post facto violation in retroactive "procedural" changes. See Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290, 53 L. Ed. 2d 344 (1977) (Change in role of Florida juries in death penalty cases); Beazell v. Ohio, 269 U.S. 167, 46 S. Ct. 68, 70 L. Ed. 216 (1925) (defendant forced to undergo joint rather that separate trial for crime); Mallett v. North Carolina, 181 U.S. 589, 21 S. Ct. 730, 45 L. Ed. 1015 (1901) (State allow to appeal from intermediate Courts award of new trial to defendant); Thompson v. Missouri, 171 U.S. 380, 18 S. Ct. 922, 43 L. Ed. 204 (1898) (Prior to second trial, law was changed to make circumstantial evidence admissible against defendant and he was convicted); Gibson v. Mississippi, 162 U.S. 565, 16 S. Ct. 904, 40 L. Ed. 1075 (1896) (Changes in juror qualifications); Hopt v. Utah, 110 U.S. 574, 4 S. Ct. 202, 28 L. Ed 262 (1884) (Change to allow convicted felon to testify as a witness against defendant. Article 1, § 10, of the Constitution forbids the States from enacting any "Ex post [illegible], facto law". The Supreme Court first interpreted this phrase in Calder v. Bull (3 Dall.) 386, 1 L.Ed. 648 (1798). There Justice Chase explained that the Ex Post Facto clause prohibited state governments from passing laws that had the effect of punishing citizens for conduct after the fact. Specifically, Justice Chase noted four type of laws that the Ex Post Facto clause prohibited.

6.) Constitution Law:

Critical to relief under Ex post facto clause is not defendant's right to less punishment, but rather, the lack of fair notice and governmental restraint when legislative increase punishment beyond what was prescribed when crime was consummated. U.S.C.A. Const. Art. 1, § 10, cl. 1.

First step in determining whether statute is punitive or regulatory, for ex post facto purposes, is to review legislative intent in creating the measure, and, if such intent is clearly punitive, then no further inquiry is required; mere fact that intent is regulatory, however, does not end inquiry, and court must undertake historical and function analysis to determine if statute's effect is punitive. U.S.C.A. Const. Art. 1 § 10 cl. 1.

Article 1, § 10, of the constitution forbids the States from enacting any "Ex post facto law." The Supreme Court first interpreted this phrase in Calder v. Bull 3 U.S. (3. Dall.) 386, 1 L.Ed 648 (1798). There, Justice Chase explained that passing laws that had the effect of punishing citizens for conduct after the fact. Specifically, Justice Chase noted four types of laws that the Ex Post Facto Clause prohibited: 1st. Every law that make an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, that the law annexed to the crime, when committed. 4th Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender.

In Doe v. Pataki, 940 F. Supp. 603 (1996). In this case, plaintiffs challenge the constitutionality of the New York State Sex Offender Registration Act, N.Y. Correction Law §§168 to 168-v (McKinney Supp. 1999) (the "Act"), as applied to individuals who committed their crimes before the Act took effect. I issue a preliminary injunction on March 21, 1996 Enjoining retroactive application of the Act. Doe v. Pataki, 919 F.Supp. 691 (S.D.N.Y. 1996). The parties have now filed cross-motion for summary judgment. The principal issue presented is whether the Act increases the punishment for sex offenses after the fact. If so, the Act would violate the Ex Post Facto Clause of the United States Constitution if it were to be applied to individual who committed their crimes before the Act took effect on January 21, 1996. I hold that the public notification provision of the Act constitute punishment and that they increase punishment after the fact. Hence, their retroactive application would violate the Ex Post Facto Clause.

The public notification provisions are quintessentially punitive in nature, for several reasons. First although the legislature's stated intent in passing the Act was to protect, it is clear that the legislature also intended to punish sex offenders. In approving the Act, members of the New York State legislative referred to sex offenders as "depraved," "the lowest of the low," "animals," and "the human equivalent of toxic waste." (New York States Assembly Debate Minutes, June 28, 1995, at

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360-61, 393, 417)("Assembly Minutes."). One member flatly stated: "We are coming out to get them. Plaintiffs contend that the Act, as Applied to individuals convicted of sex offenses prior to its passage violates the Ex Post Facto Clause of the United States Constitution. In addition, they contend that contend that the Act has been applied to individuals who were on parole or probation when the Act became Effective in a manner that is inconsistent not only with the terms of the Act but also with the Due Process Clause.

Perhaps more clearly than anything elses, the effect of community notification show that these provisions are punitive. Notification increases punishment simply because it increases the penalty—or suffering in right, person, or property—imposed on a sex offender for his crime. A discussion of "effect" requires consideration of: (i) whether the Act imposed an Affirmative disability or restraint on registrants, (ii) whether the Act increases punishment by interfering with the ability of sex offenders to rehabilitate, and III whether the Act server the goal of punishment. These cases do not require the conclusion that the public notification provisions of the Act are regulatory..

Public notification under the Act is not simply a matter, for example, of being qualified to work in the pharmaceutical industry or on the waterfront of being qualified to carry a gun. Rather, public notification results in broader, more fundamental consequences – which amount to punishment. Judge Squatuto noted in Roe v. Office of Adult Probation, 938 F. Supp. At 1091, "the consequences of [Community Notification] are unlimited. Notification is an affirmative placement by the State of a form of public stigma by its very nature pervades into every aspect of an offender's life."

"[P]unishments aim to deter future undesired conduct by visiting some significantly unpleasant consequence upon the criminal." Rowe, 884 F. Supp. At 1379. The ostracism, public humiliation, and other harsh consquences that result from public notification certainly deter future criminal conduct. Moreover, public notification also serves the goal of retribution by giving the sex offenders what many believe they deserve. Finally, public notification has the effect of incapacitating sex offenders as it restricts their ability to recntes society and indeed results in their banishment from the community. In Artway v. Attorney General of New Jersey 876

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F. Supp. 666 (1995). Plaintiffs contends that Megan's Law, which mandates that he register with local and state authorities as a sexual offender and provides for the potential public dissemination of certain information regarding his identity appearance, criminal record, and place of residence, is unconstitutional. Plaintiffs argues that Megan's Law deprives him of his Right to due process, equal protection and private, that it violates the constitutional prohibition against cruel and unusual punishment as well as the prohibition against ex post facto laws, and that it constitutes a bill of attainder. Defendants refute that challenge, and argue that the law is constitutional in both form and effect.

While plaintiffs has asserted severals grounds for challenging the constitutionality of Megan's Law, the major avenue of attack which appear to have particular viability, and demands particular application in this case, are; (a) the ex post facto clause of the United States Constitution (b) the prohibition against cruel and unusual punishment as set forth in the Eight Amendment; (c) the constitutional right to privacy as recognized in the United States Constitution; the prohibition against Bills of Attainder; and (E) the Double Jeopardy Clause; The historical context and intent of the clause is instructive in determining its application in the instant case. The drafters of the United States Constitution placed a great deal of emphasis on the principle that, in this new union recently released from the perceived tyranny of British rule, citizens should not be faced with the prospect that their conduct innocent when carried out - could be rendered criminal after the fact. See Calder v. Bull 3 U.S. (3 Dall.) 386, 389, 1 L.Ed. 648 (1798). Justice Chase writing for the Court in Calder, wrote:

The prohibition against the making of any ex post facto laws was introduced for greater caution, and very probably arose from the knowledge, that the Parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties; the first inflicting capital, and the other less punishment... Sometimes they respected the crime, by declaring acts to be treason, which were not treason, when committed, [] at other times, they violated the rules of evidence (to supply a deficiency of legal proof) by admitting one witness, when the existing law required two; by receiving evidence without oath; or the oath of the wife against the husband; or other testimony which the courts of justice would not admit; " At other times they inflicted punishments, where the party was not, by law, liable to any punishment; " and in other cases, they inflicted greater punishment that the law annexed to the offense.... With very few exceptions the advocates of such laws were stimulated by ambition, or personal resentment, and vindictive malice. To prevent such and similar acts of violence and injustice, I believe, the Federal and State Legislative, were prohibited from passing any bill of attainder; or any ex post facto law.

The Supreme Court of Arizona applied ex post facto analysis to a statute demanding that persons convicted of certain sexual offenses must register with the sheriff of the county in which they reside or are temporarily domiciled within thirty (30) days of their release from prison or their entry into that county. Arizona v. Noble, 171 Ariz. 171, 829 P.2d 1217, 1219-20 & N. 1 (1992). The Arizona statute did not contain a provision under which the public would be informed of the ex-convict's presence in the Community. The Court applied the Calder test relating to whether a changed or enhanced punishment had been attached to certain crimes or conduct after the fact. Id. 829 P.2d at 1220. As a threshold matter, the Noble Court found that the statute did have a retroactive effect in that the registration requirement had not been in effect at the time the offenders challenging the statute had carried out their conduct; thus they had not been given fair warning of the likely outcome of such conduct. As such, Ex post facto analysis was triggered.

In it analysis whether the Registration Act promoted the traditional aims of punishment (namely, deterence or retribution), the Rowe Court found that the Act was "abuiously meant to deter crime." That finding notwithstanding, the court found that under the registration Act the deterrence involved placed a de minimis burden upon registrants. [T]he only meaningful deterrence flowing directly from registration comes from modifying the conduct of the police and the public. Forewarmed of a sex offenders presence, potential victims may take evasive action, and the police may be able to act more swiftly." Id. at 13 (Emphasis in original). The Court's analysis, however, did not end there: It looked to the indirect consequence of registration. The Rowe Court found that the embarrassment, harrassment, ostracism, or worse likely to result from public dissemination of a registrant's information deemed the Act punitive. Id. At 14.

The last elements of Kennedy analysis gave the Rowe Court reason to separate the registration requirement itself from the consequent public dissemination of a registrant's information. Id. At 15-16. The court looked to precedent from other jurisdictions (discussed herein), but independently concluded that Alaska's Registration Act was overly broad in its provisions for the public dissemination of registration information. Id. At 16-17. As such, the court found that the seventh elements of Kennedy analysis weight in favor of finding the Act punitive.

The public dissemination of a registrant's information may well affect his employability; his business association if he is self-employed (as is plaintiffs), his ability to return to a normal private law-abiding life in the community. It has long been a facet of United States law that criminal records should be Available to the public for scrutiny and investigations. Such criminal records nounally would include an individual's name, address, the nature of his crime and conviction and the period for which he was imprisoned therefore. However, Megan's Law goes beyond that. The registration and public notification provision of Megan's Law provide public dissemination, not mere access by vigilant members of the public of a convicted sex offender's name, likeness, place of residence, place of employment, a description and identification of his motor vehicle, as well as that information already available in the public record. Therefore, Megan's Law goes will beyond all previous provisions for public access to an individual's criminal history. Indeed, unlike provious access provisions, registration and public notification ensure that, rather than lying potentially dormant in a court-house record room, a sex offender's former mischief whether habitual or once-of-shall remain with him for life, as long as he re-mains a resident.

There is no doubt that Megan's Law affects these who have been convicted of a sex offense or one of the other categorized offense listed therein. As such, the registration requirement of Megan's Law clearly relates to the individual's previous criminal activity. But the Court must look more closely at the factor. Article I, § 10 of the Constitutions denies states the power to enact ex post facto law which are laws punishing people for acts done before the law's passage. The Constitution provision forbids "Any Law"; "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." Weaver v. Graham, 450 U.S. 24, 28, 101 S. Ct. 960, 964, 67 L.Ed. 2d. 17 (1981) (citation omitted). Plaintiffs characterized the Registration Act as a law which punishes sex offenders for their past conduct. Defendants characterize it as a proper exercise of the State's Police power which does not punish past offense, but regulates present conduct.

It has long been a facet of United States Law that criminal records should be available to the public for scrutiny and investigation. Such criminal records normally would include an individual's name, address, the nature of his crime and conviction and the period for which he was imprisoned therefor. However, Megan's Law goes beyond that. The registration and public notification provisions of Megan's Law provide dissemination- not mere access by vigilant members of the public - of a convicted sex offender's name, likeness, place of residence, place of employment, a description and identification of his motor vehicle, as well as that information already available in the public record. Therefore, Megan's Law goes well beyond all provious provisions for public access to an individual's criminal history. Indeed, unlike previous access provisions registration and public notification ensure that, rather than lying potentially dormant in a courthouse record room, a sex offender's former mischief whether habitual of once-of-shall remain with him for life, as long as he remains a resident. There was likelihood of success on merits of claim that Act's provision for public dissemination of information violated both Expost facto clause and offender's plea agreemeet.

In conclusion plaintiffs prays that court grant relief for a Temporary Injuction against the Sex Offenders Registration and Notification Provision for the Plaintiffs can goes on pursue a normal life without fear double restrainght form government fear vigalante activities and

Outside Entearances.

Respectfully Submitted
Moses Glenn Carroll
Moses Glenn Carroll
00119507

I, Moses Glenn Carroll, 00119507 being presently incarcerated in Harris County Jail in Harris County, Texas, declare under penalty of prejury that the foregoing is true and correct.

Executed On 7/12/16

Moses Glenn Carroll
Moses Glenn Carroll

Executed On ________

____
Notaray

ORDER

On this the ______ day of ______________ 20__, came to be heard petitioner's Motion for A Preliminary Injunction and it appear to this Court that it should be:

Grant ______________
Denied ______________ and it is so order

____